

IN THE SUPREME COURT OF OHIO

ORIGINAL

JOHN DOE,

Petitioner,

v.

CINCINNATI PUBLIC SCHOOLS, et al.,

Respondents.

Case No. 09-2104

On Certification of State Law Questions
from the United States District Court for the
Southern District of Ohio

MEMORANDUM OF RESPONDENTS CINCINNATI PUBLIC SCHOOLS AND MARY
RONAN OPPOSING CONSIDERATION OF CERTIFIED QUESTIONS

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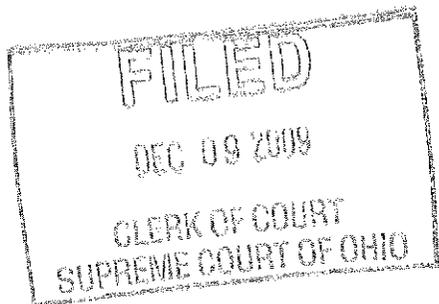


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I. INTRODUCTION

On November 19, 2009, the United States District Court for the Southern District of Ohio certified two questions of state law pursuant to Supreme Court Rule XVIII:

1. Does R.C. 3319.391 and Ohio Adm. Code 3301-20-01 violate the Retroactivity Clause of Article II, Section 28 of the Ohio Constitution?
2. Does R.C. 3319.391 and Ohio Adm. Code 3301-20-01 violate the Contract Clause of Article II, Section 28 of the Ohio Constitution?

The underlying case arose when Petitioner John Doe ("Doe") was terminated from his employment with Respondent Cincinnati Public Schools ("CPS") based on the results of a criminal records background check required by R.C. 3319.391 and the version of Ohio Adm. Code 3301-20-01 in effect during the 2008-09 school year. (See Amended Complaint, attached hereto as Exhibit A) Based on Doe's conviction for a drug trafficking offense in 1976, Doc was disqualified from employment with CPS or any Ohio public school.

Respondents CPS and CPS Superintendent Mary Ronan (collectively, "CPS Defendants") respectfully submit that the Court should decline to answer the certified questions. Following Doe's termination, and subsequent to Doe's moving to certify questions to the Supreme Court, the Ohio Department of Education ("ODE") amended the regulation that resulted in his termination. Under the current version of the regulations, Doe's drug trafficking conviction would not automatically bar his employment with CPS. The CPS Defendants respectfully submit that the Court should not expend valuable judicial resources examining the constitutionality of a regulation that is no longer in effect.

If the Court answers the certified questions, the Court should answer both questions in the negative. R.C. 3319.391 and the former version of Ohio Adm. Code 3301-20-01 do not violate the Ohio Constitution's prohibition against retroactive laws and did not unconstitutionally impair Doe's employment contract with CPS. Even if the laws were unconstitutional, however,

there is no reason that Respondents CPS or Superintendent Ronan should be liable for simply following the directives of the Ohio General Assembly and ODE. The Court should decline to answer the certified questions, or answer the questions in the negative.

II. BACKGROUND

A. R.C. 3319.391 and Ohio Adm. Code 3301-20-01

In 2007, the Ohio General Assembly enacted R.C. 3319.391 requiring all non-licensed employees of Ohio school districts to undergo a criminal records background check. *See* Sub. H.B. 190 (127th G.A.). Since 1993, teachers and other licensed employees of Ohio public schools have been required to undergo criminal records background checks in accordance with procedures specified in R.C. 3319.39. The statute provides a list of criminal offenses which are bars to employment in Ohio public schools. R.C. 3319.39(B)(1)(a). Beginning on September 5, 2008, non-licensed personnel of public schools were subject to the same requirements. R.C. 3319.391(C) (any non-licensed employee found to have been convicted of an enumerated offense "shall be released from employment").

Pursuant to R.C. 3319.39(E), ODE adopted rules to implement the criminal records checks, "including rules specifying circumstances under which [a public school] may hire a person who has been convicted of [an enumerated] offense but who meets standards in regard to rehabilitation set by the department." When the background check requirements were expanded to cover non-licensed personnel in 2008, ODE already had established rehabilitation standards for teachers and licensed personnel. Ohio Adm. Code 3301-20-01 (2005) (attached hereto as Exhibit B). Under the version of the licensed personnel regulations, in place since 2005, certain crimes involving violent offenses, drug abuse offenses, theft offenses, and sexually-oriented offenses were automatic bars to employment, and an individual could not show that he was

rehabilitated regardless of how long ago the offense had been committed. Ohio Adm. Code 3301-20-01(E)(1)(c) (2005) (Exhibit B).

B. John Doe's Employment With Cincinnati Public Schools

Petitioner John Doe was convicted of a drug trafficking offense under R.C. 2925.03 in 1976, and served over three years in an Ohio correctional facility. (Amend. Compl. ¶¶ 19-20, Exhibit A) He was employed by CPS in 1997. (*Id.* at ¶ 7) In September 2008, pursuant to R.C. 3319.391, Doe underwent a criminal records background check. Under the ODE regulations in effect at that time, CPS was not allowed to consider any rehabilitation standards with respect to Doe's drug trafficking conviction, and Doe was notified that his employment would be terminated. (*Id.* at ¶ 12) Although it was under no obligation to do so, CPS allowed Doe first to use all of the sick leave that he had accumulated. (*Id.*) When his sick leave expired, CPS released Doe from his employment as it was required to do under R.C. 3319.391(C).

C. Procedural Background

Doe filed this lawsuit against the CPS Defendants and ODE in Ohio state court in April 2009. *Doe v. CPS, et al.*, Hamilton County Common Pleas Case No. A0903419. Defendants removed the case to federal court on April 7, 2009. *Doe v. CPS, et al.*, S.D. Ohio Case No. 1:09-CV-243, Doc. 1.

Plaintiff's complaint alleges a cause of action for breach of contract and claims under the Ohio and U.S. Constitutions. He claims that R.C. 3319.391 and Ohio Adm. Code 3301-20-01 (2005) violated his constitutional rights under the impairment of contracts clauses of the Ohio and U.S. Constitutions (Amend. Compl. ¶¶ 43-46), the ex post facto clause of the U.S. Constitution (*id.* at ¶¶ 53-56), the retroactive laws clause of the Ohio Constitution (*id.* at ¶¶ 64-67), the due process clause of the U.S. Constitution (*id.* at ¶¶ 73-78), and the equal protection clause of the U.S. Constitution (*id.* at ¶¶ 85-89).

Doc filed a motion for a temporary restraining order and preliminary injunction to prevent CPS from terminating his employment, which the federal district court denied. S.D. Ohio Case No. 1:09-CV-243, Docs. 3, 10. In May 2009, ODE filed a motion to dismiss Doe's complaint for failure to state a claim upon which relief could be granted arguing that the challenged statute and regulation were not unconstitutional under any of Doe's theories. *Id.*, Doc. 17. CPS and Superintendent Ronan filed a motion for judgment on the pleadings, incorporating by reference ODE's arguments as to the constitutionality of the challenged statute and regulations. *Id.*, Doc. 19. The CPS Defendants further argued that Doe did not state a claim against them for simply following the directives of the General Assembly and Department of Education. *Id.*

Doc never responded to the CPS Defendants' motion for judgment on the pleadings, but instead filed a motion to certify Ohio constitutional questions to this Court. *Id.*, Doc. 23. The CPS Defendants filed a memorandum in opposition to Doe's motion to certify, arguing that certification was inappropriate under Supreme Court Rule XVIII. *Id.*, Doc. 26. Among other reasons, the CPS Defendants pointed out that ODE was considering changes to Ohio Adm. Code 3301-20-01 and that it would be premature for the district court to certify questions to the Supreme Court regarding a regulation which could soon be amended. *Id.*

Nevertheless, on November 16, 2009, the district court granted Doc's motion to certify questions to this Court. *Id.*, Doc. 28. The district court denied ODE's motion to dismiss and the CPS Defendants' motion for judgment on the pleadings, with instructions to refile after the Supreme Court ruled on the certified questions.

D. ODE Adopts Changes To Ohio Adm. Code 3301-20-01

As expected, in August 2009, ODE issued revised regulations to implement the criminal records background check requirement for non-licensed employees of public schools. Under the

new final rules effective on August 27, 2009, Ohio Adm. Code 3301-20-01 now only applies to teachers and other licensed employees.

ODE adopted a new rule, Ohio Adm. Code 3301-20-03 (2009) (attached as Exhibit C), regarding criminal background checks for non-licensed employees. While some crimes are still considered by ODE to be "non-rehabilitative," the revised regulations provide time limits for most crimes which allow the rehabilitation standards to be considered.¹ Pursuant to the amended regulations, Doe's 1976 conviction is not an automatic bar to his employment in a non-licensed position in an Ohio public school. Provided he meets the rehabilitation standards set forth in Ohio Adm. Code 3301-20-03(D) (2009), he is eligible again for employment at CPS.

III. THE COURT SHOULD DECLINE TO ANSWER THE CERTIFIED QUESTIONS

The CPS Defendants respectfully submit that the Court should decline to answer the certified questions. ODE has amended the regulation that forms the basis of the certified questions, and it would be a waste of judicial resources for the Court to consider the constitutionality of a regulation which is no longer in effect. Moreover, answering the certified questions is not warranted under Section 1 of Supreme Court Rule XVIII because answering the question in Doe's favor would not be determinative of the district court proceeding and the statute and regulation are constitutional under well-established Ohio precedent.

¹ Under Ohio Adm. Code 3301-20-03(A)(6), sexually oriented offenses are considered non-rehabilitative. Murder and manslaughter are considered non-rehabilitative, but the rehabilitative standards may be considered for "other violence related offenses" occurring more than twenty years prior to the criminal records background check. *Id.* The rehabilitative standards may be considered for all "drug offenses" occurring more than ten years prior to the criminal records check. *Id.* The standards may be considered for "theft offenses" occurring more than ten years from the criminal records check. *Id.* The standards may be considered for all other violations identified in R.C. 3319.39 occurring more than five years before the criminal records check. *Id.*

A. The Supreme Court Should Not Determine The Constitutionality Of A Regulation Which Has Been Amended And No Longer Bars Doe From Employment With CPS.

This Court should decline to answer the certified questions because the ODE regulation which had precluded CPS from considering the rehabilitation standards with respect to Doe's 1976 conviction for drug trafficking is no longer in effect. At the time Doe filed his motion to certify questions in July 2009, the former version of the ODE regulation was still in effect, and Doe was at that time barred from being employed in a non-licensed position with an Ohio public school district. Now that the regulations have been revised, it would be a waste of judicial resources for the Court to consider the certified questions.

Although Doe understands that he is currently eligible to be employed by CPS, he has nevertheless continued to prosecute this lawsuit to recover the backpay he claims that he would be entitled to if his employment had never been terminated in accordance with the law. CPS notified Doe of the results of the criminal records check in November 2008, and informed him that his employment would be terminated. (Amend. Compl. ¶ 12) At that time, Doe was taking sick leave, and CPS allowed Doe to continue to collect his full salary as sick pay through at least April 2009. (*Id.*) The only remaining question in this case is whether Doe is entitled to be reinstated to his former position, have his sick leave restored, and be paid backpay for the weeks during the remainder of the 2008-09 school year during which CPS was barred from employing him. The CPS Defendants respectfully submit that the district court may answer these questions without the Supreme Court expending its own valuable judicial resources.

B. Even If The Supreme Court Answers The Certified Questions In Doe's Favor, The Result Would Not Be Determinative Of The District Court Proceeding.

The CPS Defendants have argued in their motion for judgment on the pleadings that even if the former regulation was unconstitutional, they cannot be held liable for simply following the directives of the Ohio General Assembly and ODE. Even if the Court finds that the statute and regulation were unconstitutional, there is no basis for holding the CPS Defendants liable for simply following the law. Indeed, this Court has held that public employees cannot sue their employer for violations of the Ohio Constitution:

[P]ublic employees do not have a private cause of civil action against their employer to redress alleged violations by their employer of policies embodied in the Ohio Constitution when it is determined that there are other reasonably satisfactory remedies provided by statutory enactment and administrative process.

Provens v. Stark County Bd. of Mental Retardation & Develop. Disabilities (1992), 64 Ohio St.3d 252, 261, 1992-Ohio-35, 594 N.E.2d 959. Based on the panoply of administrative and collective bargaining rights enjoyed by the public employee in *Provens* (the same rights available to Doe in this case), the Court concluded that "there was no private constitutional remedy . . . in that the Ohio Constitution itself does not provide for a civil damage remedy." *Id.* at 261. Thus, even if the Court answered the certified questions and found that the former version of the regulation was unconstitutional, the CPS Defendants would not be liable.

C. The Statute And Regulation Are Constitutional Under The Retroactive Laws And Impairments To Contracts Clauses Of The Ohio Constitution.

1. R.C. 3319.391 and Ohio Adm. Code 3301-20-01 (2005) do not violate the retroactive laws clause of the Ohio Constitution.

The first certified question is whether R.C. 3319.391 and Ohio Adm. Code 3301-20-01 (2005) violate Ohio Const. Art. II, sec. 28, which provides: "The general assembly shall have no power to pass retroactive laws."

To show that the retroactive laws clause was violated, Doe must show that the statute impairs his "vested substantive rights," and is not merely remedial *State v. Ferguson* (2008), 120 Ohio St.3d 7, 12, 2008-Ohio-4824, 896 N.E.2d 110 (holding that changes to Ohio's sexual offender registration and notification law were not punitive and were not unconstitutionally retroactive). A "statutory scheme that serves a regulatory purpose is not punishment even though it may bear harshly upon one affected. Consequences as drastic as deportation, deprivation of one's livelihood, and termination of financial support have not been considered sufficient to transform an avowedly regulatory measure into a punitive one." *Id.* (emphasis added) (citing *Doe v. Pataki* (C.A.2 1997), 120 F.3d 1263, 1279).

In *State ex rel. Matz v. Brown* (1998), 37 Ohio St.3d 279, 282, 525 N.E.2d 805, this Court explained the "important public policy reason" for holding that non-punitive laws are not unconstitutionally retroactive:

[I]f Relator's theory were to prevail, no person convicted of abusing children could be prevented from school employment by a later law excluding such persons from that employment.

Id. at 282 (holding that statute that restricted persons convicted of a past felony from making a claim on a crime victim fund was not unconstitutionally retroactive).

Here, the statute and regulation were clearly designed to protect Ohio public school children, and the certified question should be answered in the negative. Because R.C. 3319.391

and the ODE regulation were regulatory not punitive, the Court should find that they do not violate the retroactive laws clause of the Ohio Constitution.

2. R.C. 3319.391 and Ohio Adm. Code 3301-20-01 (2005) do not violate the impairment of contracts clause in the Ohio Constitution.

The second certified question asks whether R.C. 3319.391 and Ohio Adm. Code 3301-20-01 (2005) violate the impairment of contract clause of the Ohio Constitution which provides that "[t]he general assembly shall have no power to pass . . . laws impairing the obligation of contracts." Section 28, Article II, Ohio Constitution.

Doe claims that the challenged statute and regulation unconstitutionally impair his employment contract with CPS.² But CPS's contract with Doe was expressly conditioned on Doe possessing appropriate certification from the state to work in a public school:

Commencement of the term of this agreement subject to confirmation of appropriate state certification.

(Exhibit D) Doe's employment contract with CPS was not impaired by the criminal background check requirement imposed by the General Assembly and ODE.

Even if the certification condition had not been expressly written into Doe's contract, however, the enactment of R.C. 3319.391 did not violate Section 28, Article II of the Ohio Constitution. CPS and Doe could not enter into a contract that would abrogate the ability of the General Assembly or ODE to change the qualifications for personnel of Ohio public schools. See, e.g., *State v. Netherland* (Ohio App. 4th Dist.), 2008-Ohio-7007, ¶ 40, 2008 WL 5451339 (holding that statutory revisions to Ohio sex offender classification statute did not unconstitutionally impair convict's plea agreement with county prosecutor). See also *Lima v. State*, 122 Ohio St.3d 155, 157, 2009-Ohio-2597, 909 N.E.2d 616 (holding that General

² Plaintiff's multiple year administrative contract with CPS was attached as an exhibit to his state court complaint and is attached hereto as Exhibit D.

Assembly's statutory prohibition of residency requirements as a condition of employment did not unconstitutionally impair municipalities' contractual agreements with public employees).

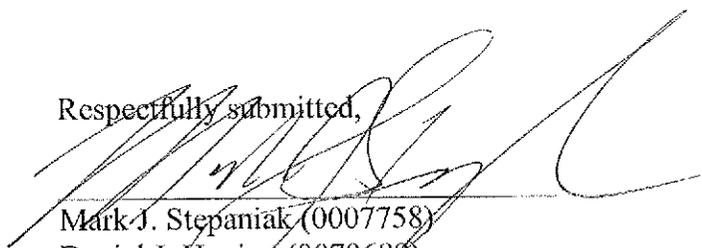
"It is well settled that the provisions of the state and federal Constitutions inhibiting laws impairing the obligation of contract, cannot affect the police power." *Benjamin v. City of Columbus* (1957), 167 Ohio St. 103, 116, 146 N.E.2d 854. The state's authority to legislate pursuant to its police power "must be treated as an implied condition of any contract." *City of Akron v. Public Utilities Commission* (1948), 149 Ohio St. 347, 355-356, 78 N.E.2d 890. It is "well established . . . that when the subject of the contract is one which affects the safety and welfare of the public, such contracts are held to be within the supervising power and control of the legislature when exercised to protect the public safety, health and morals." *Id.*

The decision by the General Assembly and ODE to prohibit persons convicted of drug trafficking from working in public schools was a valid exercise of the state's police power to protect Ohio public school children. The question of whether Doe's employment contract with CPS was unconstitutionally impaired should be answered in the negative.

IV. CONCLUSION

For each and all of the foregoing reasons, Respondents Cincinnati Public Schools and Mary Ronan respectfully submit that the Court should decline to answer the certified questions, or in the alternative, answer the certified questions should be answered in the negative.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via regular U.S. mail, postage prepaid upon the following this 9th day of December 2009:

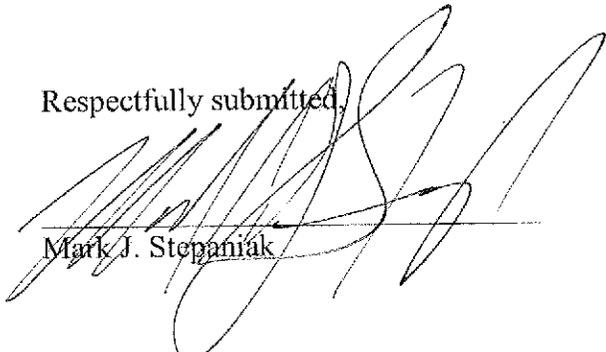
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Respectfully submitted,



Mark J. Stepaniak

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
*Electronically Filed***

JOHN DOE	:	Case No. 1:09-CV-243
	:	
Plaintiff,	:	Judge Michael R. Barrett
	:	
vs.	:	
	:	
CINCINNATI PUBLIC SCHOOLS BOARD OF EDUCATION, et al.,	:	AMENDED COMPLAINT FOR BREACH OF CONTRACT, DECLARATORY JUDGMENT, RELIEF UNDER 42 U.S.C. § 1983, PERMANENT INJUNCTION, AND A WRIT OF MANDAMUS
Defendants.	:	

For his Amended Complaint against Defendants the Cincinnati Public Schools Board of Education and Mary Ronan, Interim Superintendent (hereinafter collectively referred to as "Defendants"), Plaintiff John Doe alleges as follows:

PARTIES

1. Plaintiff John Doe ("Plaintiff") is an individual resident of Hamilton County, Ohio.
2. Defendant Cincinnati Public Schools ("CPS") is the Ohio public school district providing public education to school children in the City of Cincinnati, with its principal office located at 2651 Burnet Avenue, Cincinnati, Hamilton County, Ohio 45219.
3. Defendant Interim Superintendent, Mary Ronan ("Ronan") is an individual residing at 540 Fairbanks Avenue, Cincinnati, Hamilton County, Ohio 45205-2248.
4. Defendant Ohio Department of Education is an Ohio governmental agency.

JURISDICTION

5. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. This case was removed pursuant to 28 U.S.C. § 1441.

6. Venue is proper under 28 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

7. Plaintiff has been employed by CPS for over 11 years, first as a “Safe & Drug Free School Specialist” beginning in 1997, then as a “Due Process Hearing Specialist” beginning in 2002 through the present.

8. Plaintiff primarily supports himself with his wages from his employment at CPS.

9. Since 2002, Plaintiff has worked in an administrative capacity only. He does not have direct contact with students except at administrative hearings when a student's guardian is present.

10. Plaintiff has received either an “acceptable” or “accomplished” job evaluation every year since he became employed at CPS.

11. On July 14, 2008, Plaintiff and Defendants, through their agent, Jonathon Boyd entered into a written contract (hereafter “the Contract”) whereby Plaintiff would be employed as a Hearing Officer for the 2008-2009 school year, at a salary of \$77,389.52, with an adjustment, considering he is to work 210 days.

12. Plaintiff was in full compliance with the terms of the Contract, when, on November 24, 2008, Defendants, through their agent, Carol Landwehr, contacted Plaintiff by phone to inform him that they intended to terminate his employment. Defendants agreed to employ Plaintiff until he used all of the “sick leave” he had accumulated. His accumulated sick leave will become exhausted in April of 2009.

13. On January 26, 2009, Defendants, through their agent, Carol Landwehr, contacted Plaintiff by letter, stating that Doc was barred from continued employment at CPS pursuant to Ohio Rev. Code § 3319.39 and 127th Ohio General Assembly House Bill 190 ("H.B. 190").

14. H.B. 190 and 127th Ohio General Assembly Substitute House Bill 428 ("Sub.H.B. 428"), effective respectively in November of 2007 and September of 2008, changed existing law and added a statutory provision, Ohio Rev. Code. § 3319.391. This provision requires, *inter alia*, a criminal records check of all current employees of a school district. Any current employee who has a conviction of certain enumerated offenses must be released from employment without regard to the time that has passed since the conviction or the life that the employee has led following the conviction.

15. Ohio Rev. Code. § 3319.39 grants the Defendant Ohio Department of Education the power to adopt administrative rules specifying the circumstances under which a person may be hired or retained if the person meets "standards in regard to rehabilitation set by the department."

16. Defendant Ohio Department of Education adopted such a rule, Ohio Admin. Code § 3301-20-01, which establishes a set of criteria that are used to determine whether a "reasonable person would conclude that the [employee's continued employment] . . . will not jeopardize the health, safety, or welfare of the persons served by the district."

17. Ohio Admin. Code § 3301-20-01 provides that the following are "[e]vidence that the [employee's] hiring or licensure will not jeopardize the health, safety or welfare of the persons served by the district . . .

- i. The nature and seriousness of the crime;
- ii. The extent of the applicant's past criminal activity;
- iii. The age of the applicant when the crime was committed;

- iv. The amount of time that has elapsed since the applicant's last criminal activity;
- v. The conduct and work activity of the applicant before and after the criminal activity;
- vi. Whether the applicant has completed the terms of his probation or deferred adjudication;
- vii. Evidence of rehabilitation;
- viii. Whether the applicant fully disclosed the crime to the state board, the department, and the district;
- ix. Whether employment or licensure will have a negative impact on the local education community;
- x. Whether employment or licensure will have a negative impact on the state-wide education community; and
- xi. Any other factors the state board, district, or superintendent considers relevant."

18. Individuals convicted of certain offenses, however, may not prove that they have been rehabilitated under any circumstances. These offenses include (a) offenses of violence, (b) theft offenses; (c) drug abuse offenses; and (d) sexually-oriented offenses.

19. Plaintiff was convicted of Unlawful Sale of Narcotic Drugs on November 11, 1976.

20. Plaintiff served over three years in a correctional facility for his November 1976 conviction, where he became rehabilitated.

21. While incarcerated, Plaintiff began to take classes in furtherance of his goal of obtaining a Bachelor of Science degree.

22. After his incarceration, Plaintiff continued his education at the University of Cincinnati and obtained his B.S. in Sociology in December of 1983.

23. Plaintiff has also become a Licensed Social Worker and Certified Chemical Dependency Counselor.

24. Since his 1976 conviction, Plaintiff has spent a significant portion of his life working with young people to avoid drugs and other peer-pressure-related problems.

25. Plaintiff does not have any other criminal convictions.

26. Plaintiff's 1976 criminal conviction was expunged pursuant to Ohio Rev. Code § 2953.32 in August of 1997.

27. Plaintiff would qualify for continued employment under the rehabilitation criteria found in Ohio Admin. Code § 3301-20-01. However, the rule arbitrarily excludes Plaintiff from showing he has been rehabilitated because his conviction is for a drug abuse offense.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

28. Plaintiff reasserts the allegations contained in paragraphs 1 through 25 as if fully rewritten herein.

29. Plaintiff and Defendants CPS and Ronan entered into the Contract.

30. According to the terms of the Contract, Defendants CPS and Ronan agreed to employ Plaintiff through the 2008-2009 school year.

31. At all times relevant, Plaintiff was and is ready, willing, and able to perform his obligations under the Contract.

32. Defendants CPS and Ronan repudiated the Contract when they, through their agent, Carol Landwehr, contacted Plaintiff by phone to inform him that they intended to terminate his employment as soon as he returned from sick leave in April 2009.

33. Defendants CPS and Ronan repudiated the Contract when they, through their agent, Carol Landwehr, contacted Plaintiff by letter, stating that Plaintiff was barred from continued employment at the district pursuant to Ohio Rev. Code. § 3319.39 and H.B. 190.

34. Defendants CPS and Ronan refuse to comply with the terms of the Contract and have anticipatorily repudiated it.

35. Breach of the Contract will cause Plaintiff irreparable harm as this job is his primary means of support, and he will be unable to obtain a similar position at any school in Ohio pursuant to Ohio Rev. Code. §§ 3319.391, 3319.39, as amended by H.B. 190 and Sub.H.B. 428, and Ohio Admin. Code § 3301-20-01.

36. Accordingly, Plaintiff is entitled to specific performance of his employment Contract.

37. As an alternative pleading, Plaintiff asserts that he will suffer damages in an amount to be determined at trial consisting of lost wages, lost contributions to his State Teacher's Retirement System account, and lost wages for personal, vacation, and sick days.

38. Plaintiff Doe has a clear legal right to continued employment, and Defendants CPS and Ronan have a corresponding clear legal duty to provide continued employment. Therefore, Plaintiff is entitled to a writ of mandamus to compel CPS and Ronan to reinstate him to his position as a Due Process Hearing Specialist and to honor his statutory employment contract.

SECOND CLAIM FOR RELIEF

(Ohio Rev. Code § 3319.391 and Ohio Admin. Code § 3301-20-01 Violate the Right to Contract Under the Ohio and United States Constitutions.)

39. Plaintiff reasserts the allegations contained in paragraphs 1 through 38 as if fully rewritten herein.

40. 42 U.S.C. § 1983 provides a private cause of action for the deprivation, under color of state law, of rights secured to individuals by the Constitution.

41. The Ohio Constitution states, "The General Assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts . . ." Section 28, Article II of the Ohio Constitution.

42. The United States Constitution states, "No State shall . . . pass any . . . Law impairing the Obligation of Contracts, . . ." Article I, Section 10, Clause 1 of the United States Constitution.

43. Ohio Rev. Code. § 3319.39 and Ohio Admin. Code § 3301-20-011 require Defendants CPS and Ronan to terminate the employment of Plaintiff despite the Contract between Plaintiff and Defendants.

44. Defendant Ohio Department of Education promulgated Ohio Admin. Code § 3301-20-01.

45. Ohio Rev. Code. § 3319.391 and Ohio Admin. Code § 3301-20-01 unconstitutionally impair the Contract between Plaintiff and Defendants under both the United States and Ohio Constitutions.

46. Ohio Rev. Code. § 3319.391 and Ohio Admin. Code § 3301-20-01 should be declared unconstitutional pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 and the Ohio Declaratory Judgment Act found in Chapter 2721 of the Ohio Revised Code.

47. Violation of Plaintiff's constitutional rights will cause Plaintiff irreparable harm.

48. Defendants should be enjoined from violating Plaintiff's constitutional rights.

49. Plaintiff Doe has a clear legal right to continued employment, and Defendants CPS and Ronan have a corresponding clear legal duty to provide continued employment.

Therefore, Plaintiff is entitled to a writ of mandamus to compel CPS and Ronan to reinstate him to his position as a Due Process Hearing Specialist and to honor his statutory employment contract.

50. Plaintiff is entitled to attorneys' fees pursuant to 42 U.S.C. § 1988.

THIRD CLAIM FOR RELIEF

(The Retroactive Application of H.B. 190 and Sub.H.B. 428 Violates the Prohibition on *Ex Post Facto* Laws in Article I, Section 10 of the United States Constitution.)

51. Plaintiff reasserts the allegations contained in paragraphs 1 through 50 as if fully rewritten herein.

52. 42 U.S.C. § 1983 provides a private cause of action for the deprivation, under color of state law, of rights secured to individuals by the Constitution.

53. Article I, Section 10, Clause 1 of the United States Constitution prohibits *ex post facto* laws.

54. The General Assembly expressly or impliedly intended Ohio Rev. Code. §§ 3319.391 and 3319.39, as amended by H.B. 190 and Sub.H.B. 428, to have a punitive effect.

55. As an alternative pleading, Ohio Rev. Code. §§ 3319.391 and 3319.39, as amended by H.B. 190 and Sub.H.B. 428, have a punitive effect.

56. Ohio Rev. Code. §§ 3319.391 and 3319.39 are unconstitutional *ex post facto* laws under the United States Constitution and should be declared unconstitutional pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 and the Ohio Declaratory Judgment Act found in Chapter 2721 of the Ohio Revised Code.

57. Ohio Rev. Code. §§ 3319.391 and 3319.39 violate Plaintiff's constitutional rights.

58. Violation of Plaintiff's constitutional rights will cause Plaintiff irreparable harm.

59. Defendants should be enjoined from violating Plaintiff's constitutional rights.

60. Plaintiff Doe has a clear legal right to continued employment, and Defendants CPS and Ronan have a corresponding clear legal duty to provide continued employment. Therefore, Plaintiff is entitled to a writ of mandamus to compel CPS and Ronan to reinstate him to his position as a Due Process Hearing Specialist and to honor his statutory employment contract.

61. Plaintiff is entitled to attorneys' fees pursuant to 42 U.S.C. § 1988.

FOURTH CLAIM FOR RELIEF

(The Retroactive Application of H.B. 190 and Sub.H.B. 428 Violates the Prohibition on Retroactive Laws in Article II, Section 28 of the Ohio Constitution.)

62. Plaintiff reasserts the allegations contained in paragraphs 1 through 61 as if fully rewritten herein.

63. The Ohio Constitution prohibits the enactment of retroactive laws.

64. The General Assembly intended Ohio Rev. Code. §§ 3319.391 and 3319.39, as amended by H.B. 190 and Sub.H.B. 428, to apply retroactively.

65. Ohio Rev. Code. §§ 3319.391 and 3319.39, as amended by H.B. 190 and Sub.H.B. 428, impair Plaintiff's substantive rights.

66. Ohio Rev. Code. §§ 3319.391 and 3319.39 are unconstitutional retroactive laws under the Ohio Constitution and should be declared unconstitutional pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 and the Ohio Declaratory Judgment Act found in Chapter 2721 of the Ohio Revised Code.

67. Ohio Rev. Code. §§ 3319.391 and 3319.39 violate Plaintiff's constitutional rights.

68. Violation of Plaintiff's constitutional rights will cause Plaintiff irreparable harm.

69. Defendants should be enjoined from violating Plaintiff's constitutional rights.

70. Plaintiff Doe has a clear legal right to continued employment, and Defendants CPS and Ronan have a corresponding clear legal duty to provide continued employment. Therefore, Plaintiff is entitled to a writ of mandamus to compel CPS and Ronan to reinstate him to his position as a Due Process Hearing Specialist and to honor his statutory employment contract.

FIFTH CLAIM FOR RELIEF
(Ohio Rev. Code §§ 3319.39, and 3319.391, and Ohio Admin. Code § 3301-20-01
Violate the Right to Procedural & Substantive Due Process of Law
Under the United States Constitution.)

71. Plaintiff reasserts the allegations contained in paragraphs 1 through 70 as if fully rewritten herein.

72. 42 U.S.C. § 1983 provides a private cause of action for the deprivation, under color of state law, of rights secured to individuals by the Constitution.

73. The Fourteenth Amendment to the United States Constitution, Section 1 states that "nor shall any State deprive any person of life, liberty, or property, without due process of law;"

74. Plaintiff has a property interest in his employment by CPS, a public school.

75. The operation of Ohio Rev. Code. §§ 3319.391, and 3319.39, as amended by H.B. 190 and Sub.H.B. 428, and Ohio Admin. Code § 3301-20-01 unconstitutionally deprives Plaintiff of his property interest without due process of law.

76. Any procedures provided to Plaintiff or that will be provided to Plaintiff are meaningless and perfunctory because the statute requires his termination.

77. The operation of Ohio Rev. Code. §§ 3319.391, and 3319.39, as amended by H.B. 190 and Sub.H.B. 428, and Ohio Admin. Code § 3301-20-01 also unconstitutionally deprives

Plaintiff of his right to substantive due process as secured to him by the Fourteenth Amendment to the United States Constitution.

78. Ohio Rev. Code. §§ 3319.39, and 3319.391, and Ohio Admin. Code § 3301-20-01 should be declared unconstitutional pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 and the Ohio Declaratory Judgment Act found in Chapter 2721 of the Ohio Revised Code.

79. Ohio Rev. Code. §§ 3319.39, and 3319.391, and Ohio Admin. Code § 3301-20-01 violate Plaintiff's constitutional rights.

80. Violation of Plaintiff's constitutional rights will cause Plaintiff irreparable harm.

81. Defendants should be enjoined from violating Plaintiff's constitutional rights.

82. Plaintiff Doe has a clear legal right to continued employment, and Defendants CPS and Ronan have a corresponding clear legal duty to provide continued employment.

Therefore, Plaintiff is entitled to a writ of mandamus to compel CPS and Ronan to reinstate him to his position as a Due Process Hearing Specialist and to honor his statutory employment contract.

SIXTH CLAIM FOR RELIEF

(Ohio Rev. Code §§ 3319.39, and 3319.391, and Ohio Admin. Code § 3301-20-01 Violate the Right to Equal Protection of Laws Under the United States Constitution.)

83. Plaintiff reasserts the allegations contained in paragraphs 1 through 82 as if fully rewritten herein.

84. 42 U.S.C. § 1983 provides a private cause of action for the deprivation, under color of state law, of rights secured to individuals by the Constitution.

85. The Fourteenth Amendment to the United States Constitution, Section 1 states that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

86. The operation of Ohio Rev. Code. §§ 3319.391, and 3319.39, as amended by H.B. 190 and Sub.H.B. 428, and Ohio Admin. Code § 3301-20-01, unconstitutionally denies Plaintiff equal protection of the laws because Plaintiff is not permitted to show that he has been rehabilitated while other individuals with convictions may demonstrate rehabilitation and keep their jobs.

87. Ohio Rev. Code. §§ 3319.39, and 3319.391, and Ohio Admin. Code § 3301-20-01 should be declared unconstitutional pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 and the Ohio Declaratory Judgment Act found in Chapter 2721 of the Ohio Revised Code.

88. Plaintiff is entitled to attorneys' fees pursuant to 42 U.S.C. § 1988.

89. Ohio Rev. Code. §§ 3319.39, and 3319.391, and Ohio Admin. Code § 3301-20-01 violate Plaintiff's constitutional rights.

90. Violation of Plaintiff's constitutional rights will cause Plaintiff irreparable harm.

91. Defendants should be enjoined from violating Plaintiff's constitutional rights.

92. Plaintiff Doe has a clear legal right to continued employment, and Defendants CPS and Ronan have a corresponding clear legal duty to provide continued employment. Therefore, Plaintiff is entitled to a writ of mandamus to compel CPS and Ronan to reinstate him to his position as a Due Process Hearing Specialist and to honor his statutory employment contract.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- a. An injunction instructing Defendants to refrain from terminating the employment of Plaintiff John Doe;
- b. In the alternative to an injunction, his expectation damages under the Contract;

- c. A declaration that Ohio Rev. Code §§ 3919.391, and 3939.39, as amended by H.B. 190 and Sub.H.B. 428, and Ohio Admin. Code § 3301-20-01 are unconstitutional under the Ohio and/or United States Constitutions;
- d. An injunction instructing Defendants to refrain from violating Plaintiff John Doe's rights under the Ohio and United States Constitutions;
- e. A writ of mandamus to compel CPS and Ronan to reinstate him to his position as a Due Process Hearing Specialist and to honor his statutory employment contract.
- f. Attorneys' fees pursuant to 42 U.S.C. § 1988; and
- g. Any and all other relief that the Court may deem appropriate.

Respectfully Submitted,

/s/ Christopher R. McDowell

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion was served this 24th day of April, 2009 via ECF on the following:

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Baldwin's

**OHIO
MONTHLY
RECORD**

Rules filed for the month are printed in numerical order. Rules are published exactly as filed.

Emergency rules are printed with a note before the text of the rule and are effective for 90 days.

Pamphlet No. 3

SEPTEMBER 2005

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Ohio Attorney Generals Office

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Administration Library

3301-20-01 Employment of individuals with certain criminal convictions

(A) Definitions - The following terms are defined as they are used in this rule:

(1) "Applicant" means one of the following:

(a) One who is under final consideration for appointment or employment in a position with a district as a person responsible for the care, custody, or control of a child. An "applicant" does not include a person already employed by a district in a position of care, custody, or control of a child who is under consideration for a different position with the same district; or

(b) A person applying for an initial educator license issued under section 3319.22 or 3319.301 of the Revised Code or a license to teach in a chartered nonpublic school.

(2) "Teacher" means a person holding any educator license issued under section 3319.22 or 3319.301 of the Revised Code or a license to teach in a chartered nonpublic school.

(3) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

(4) "District" means a school district as described in section 3311.01 of the Revised Code, educational service centers, community schools, county MR/DD's, chartered non-public schools and preschool programs.

(5) "State board" means the Ohio state board of education as defined in section 3301.01 of the Revised Code.

(6) "Superintendent" means the superintendent of public instruction and his/her designee as defined in section 3301.13 of the Revised Code.

(7) "Department" means the Ohio department of education as defined in section 3301.13 of the Revised Code.

(8) "License" means the same as the term license as defined in division (A) of section 3319.31 of the Revised Code.

(9) An offense of violence means a violation of sections 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), 2903.04 (involuntary manslaughter), 2903.041 (reckless homicide), 2903.11 (felonious assault), 2903.12 (aggravated assault), 2903.15 (permitting child abuse), 2905.01 (kidnapping), 2905.02 (abduction), 2905.05 (criminal child enticement), 2905.11 (extortion), 2909.02 (aggravated arson), 2911.01 (aggravated robbery), 2911.02 (robbery), 2911.11 (aggravated burglary), 2917.01 (inciting to violence), 2917.02 (aggravated riot), 2917.03 (riot), 2917.31 (inducing panic), 2921.03 (intimidation), 2921.04 (intimidation of attorney, victim or witness in criminal case), 2921.34 (escape), 2923.161 (improper discharge firearm at or into habi-

tation; school-related offenses), 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance or illegal possession of an object indistinguishable from a firearm in school safety zone), 2923.123 (illegal conveyance of deadly weapon or dangerous ordnance into courthouse, illegal possession or control in a courthouse), 2923.161 (improperly discharging firearm at or into a habitation; school related offenses), 2923.21 (improperly furnishing firearms to minor), 2923.17 (unlawful possession of dangerous ordnance; illegally manufacturing or processing explosives) of the Revised Code; divisions (B)(1), (2), (3), or (4) of sections 2919.22 (endangering children), 2909.22 (soliciting or providing support for act of terrorism), 2909.23 (making terroristic threat), 2909.24 (terrorism), 2917.33 (unlawful possession or use of a hoax weapon of mass destruction), 2927.24 (contaminating substance for human consumption or use; contamination with hazardous chemical, biological, or radioactive substance; spreading false report), 3716.11 (placing harmful objects in food/confection), 2921.05 (retaliation), 2919.12 (unlawful abortion), 2919.121 (performing or inducing unlawful abortion upon minor), 2919.13 (abortion manslaughter) of the Revised Code or section 2919.23 (interference of custody) of the Revised Code that would have been a violation of section 2905.04 (child stealing) of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date. A conviction of attempt, complicity or conspiracy to any of these offenses shall be deemed a violent offense for purposes of this rule.

(10) A theft offense means a violation of sections 2911.12 (burglary), 2913.44 (personating an officer), 2921.41 (theft in office), 2921.11 (perjury), or 2921.02 (bribery) of the Revised Code. A conviction of attempt, complicity or conspiracy to any of these offenses shall be deemed a theft offense for purposes of this rule.

(11) A drug abuse offense means a violation of sections 2925.02 (corrupting another with drugs), 2925.03 (trafficking in drugs), 2925.04 (illegal manufacture of drugs or cultivation of marihuana), 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs), 2925.05 (funding of drug or marihuana trafficking), 2925.06 (illegal administration or distribution of anabolic steroids), 2925.13 (permitting drug abuse), 2925.22 (deception to obtain a dangerous drug), 2925.23 (illegal possession of drug documents), 2925.24 (tampering with drugs), 2925.32 (trafficking in harmful intoxicants; improperly dispensing or distributing nitrous oxide), 2925.36 (illegal dispensing of drug samples), or 2925.37 (possession of counterfeit controlled substances) of the Revised Code. A conviction of attempt, complicity or conspiracy to any of these offenses shall be deemed a drug abuse offense for purposes of this rule.

(12) A sexually-oriented offense means a violation of sections 2907.02 (rape), 2907.03 (sexual battery),

Adopted September 2005

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2907.04 (unlawful sexual conduct with a minor), 2907.05 (gross sexual imposition), 2907.06 (sexual imposition), 2907.07 (importuning), 2907.21 (compelling prostitution), 2907.22 (promoting prostitution), 2907.23 (procuring), 2907.24 (soliciting; after positive HIV test), 2907.241 (loitering to engage in solicitation; solicitation after positive HIV test) 2907.25 (prostitution; after positive HIV test), 2907.31 (disseminating matter harmful to juveniles), 2907.311 (displaying harmful to juveniles), 2907.32 (pandering obscenity), 2907.321 (pandering obscenity involving a minor), 2907.322 (pandering sexually oriented matter involving a minor), 2907.33 (deception to obtain matter harmful to juveniles), 2907.34 (compelling acceptance of objectionable materials), 2907.323 (illegal use of a minor in nudity-oriented material or performance) of the Revised Code or a violation of former section 2907.12 (felonious sexual penetration) of the Revised Code. A conviction of attempt, complicity or conspiracy to any of these offenses shall be deemed a sexually-oriented offense for purposes of this rule.

(B) No district shall employ, the state board shall not issue an initial license to, and the superintendent shall not enter into a consent agreement with an applicant if he previously has been convicted of or pled guilty to any violation of any of the offenses listed in division (B)(1) of section 3319.39 of the Revised Code and section 3319.31 of the Revised Code or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to the offenses listed in division (B)(1) of section 3319.39 of the Revised Code and section 3319.31 of the Revised Code except as provided in paragraph (E) of this rule. If the state board intends to deny a license pursuant to this paragraph, the state board shall act in accordance with sections 3319.31 and 3319.311 of the Revised Code and Chapter 3301-73 of the Administrative Code.

(C) If a teacher has been convicted of or pled guilty to any offense referred to in paragraph (B) of this rule, the state board shall act in accordance with sections 3319.31 and 3319.311 of the Revised Code and Chapter 3301-73 of the Administrative Code. If the teacher satisfies all terms and conditions of a consent agreement or state board adopted resolution pertaining to the applicant, he/she shall be deemed rehabilitated with regard to the specific offense addressed in the consent agreement or resolution for purposes of future employment or licensure. A district maintains the discretion whether to employ a teacher who has been deemed rehabilitated under this paragraph.

(D) Pursuant to division (B)(2) of section 3319.39 of the Revised Code, a district may employ an applicant conditionally until the criminal records check required by sections 3301.541 and 3319.39 of the Revised Code is completed and the district receives the results of the criminal records check. If the results of the criminal records check indicate that,

pursuant to this rule, the applicant does not qualify for employment, the district shall release the applicant from employment.

(E) A district may employ, the state board may issue a license to and the superintendent may enter into a consent agreement with an applicant that has been previously convicted of or pled guilty to an offense if all of the following conditions are met:

(1) The conviction was not one of the following:

(a) An offense of violence as defined in paragraph (A)(9) of this rule;

(b) A theft offense as defined in paragraph (A)(10) of this rule;

(c) A drug abuse offense as defined in paragraph (A)(11) of this rule; or

(d) A sexually-oriented offense as defined in paragraph (A)(12) of this rule.

(2) If the conviction is not one listed in paragraph (E)(1) of this rule, the following rehabilitation criteria shall apply:

(a) At the time of the offense, the victim of the offense was not a person under eighteen years of age or enrolled as a student in a district.

(b) If the offense was a felony, at least five years have elapsed since the applicant was fully discharged from imprisonment, probation, or parole or the applicant has had the record of his conviction sealed or expunged pursuant to section 2953.32 of the Revised Code. If the offense was a misdemeanor, at least five years have elapsed since the date of conviction or the applicant has had the record of his conviction sealed or expunged pursuant to section 2953.32 of the Revised Code.

(c) The applicant has not been convicted of or pled guilty to the commission of any of the offenses listed in division (B)(1) of section 3319.39 of the Revised Code and section 3319.31 of the Revised Code two or more times in separate criminal actions. Convictions or guilty pleas resulting from or connected with the same act, or resulting from offenses committed at the same time, shall be counted as one conviction or guilty plea for purposes of this rule. A sealed or expunged conviction shall not be counted.

(d) The applicant provides written confirmation of his/her efforts at rehabilitation and the results of those efforts. Written confirmation may include a statement by a court, parole officer, probation officer and/or counselor that the applicant has been rehabilitated.

(e) A reasonable person would conclude that the applicant's hiring or licensure will not jeopardize the health, safety, or welfare of the persons served by the district. Evidence that the applicant's hiring or licensure will not jeopardize the health, safety, or welfare of the persons served by the district shall include, but not be limited to the following factors:

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- (i) The nature and seriousness of the crime;
- (ii) The extent of the applicant's past criminal activity;
- (iii) The age of the applicant when the crime was committed;
- (iv) The amount of time that has elapsed since the applicant's last criminal activity;
- (v) The conduct and work activity of the applicant before and after the criminal activity;
- (vi) Whether the applicant has completed the terms of his probation or deferred adjudication;
- (vii) Evidence of rehabilitation;
- (viii) Whether the applicant fully disclosed the crime to the state board, the department and the district;

- (ix) Whether employment or licensure will have a negative impact on the local education community;
- (x) Whether employment or licensure will have a negative impact on the state-wide education community; and
- (xi) Any other factors the state board, district, or superintendent considers relevant.

(F) It is the applicant's duty to provide written evidence upon application for employment or licensure that the conditions specified in paragraph (E) of this rule are met. If the applicant fails to provide such evidence or if the district or the state board determines that the proof offered by the applicant is inconclusive or does not establish proof of rehabilitation, the applicant shall not be hired and the license shall not be issued. Any doubt shall be resolved in favor of protecting the persons served by the district. If licensure is denied, the state board, through the superintendent, shall notify the applicant and afford the applicant the opportunity to request an administrative hearing under section 3319.31 and Chapter 119. of the Revised Code.

(G) This rule is applicable to records of convictions that have been sealed pursuant to section 2953.32 of the Revised Code when the information contained in those sealed records bears a direct and substantial relationship to the position for which the applicant is being considered.

(H) A conviction of or a plea of guilty to an offense listed in division (B)(1) of section 3319.39 of the Revised Code and 3319.31 of the Revised Code shall not prevent an applicant's hiring if the applicant has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code or the conviction or guilty plea has been set aside pursuant to law. For purposes of this rule, "unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.

(I) This rule is promulgated under the state board and department of education's rule-making authority under sections 3319.31, division (E) of section 3319.311 and section 3319.39 of the Revised Code.
Eff. 09-23-2005

RC 119.032 rule review date(s): 9-23-10

Cross References

- RC 3301.07, Powers of state board
- RC 3319.291, Fingerprints; investigation; proof of residency; criminal records
- RC 3319.31, Refusal, limitation, suspension, or revocation of license
- RC 3319.311, Investigations; hearings; orders
- RC 3319.39, Criminal records check; disqualification from employment

3301-24-11 Alternative principal license

(A) A one-year alternative principal license (renewable two times), valid for serving as principal or assistant principal, shall be issued at the request of the superintendent of a city, educational service center, local, exempted village, or joint vocational school district to an individual who is deemed to be of good moral character and who evidences the following:

- (1) Bachelor of arts/bachelor of science or masters degree from an accredited institution;
- (2) Grade point average of at least 3.0;
- (3) Two or more years of teaching experience or five years of documented successful work experience in education, management or administration.

(B) The employing school district shall provide a mentoring program for alternatively-licensed principals or assistant principals that includes the following:

- (1) Assignment of a mentor;
- (2) Completion of interstate school leaders licensure consortium (ISLLC) self-assessment (available online through ODE's website at [www.ode.state.oh.us/teaching-profession/teacher/recruitment/retention/alt cond/](http://www.ode.state.oh.us/teaching-profession/teacher/recruitment/retention/alt%20cond/));
- (3) Development of a personal learning plan approved by the mentor and superintendent; and

(4) Assistance in acquiring critical knowledge in the following areas: facilitating a vision, school culture and instructional program, managing the school organization, collaboration and community engagement, ethics and integrity, and understanding publics.

(C) For non-educators issued an alternative principal license, the employing school district shall develop and implement a planned program for obtaining classroom teaching experience (one hundred eighty clock hours with a minimum of ninety hours in both year one and year two). Such a program must require the alternatively-licensed principal or assistant

3301-20-03

Employment of non-licensed individuals with certain criminal convictions.

The purpose of this rule is to provide for the safety and well-being of students, and pursuant to sections 3319.39 and 3319.391 of the Revised Code, set rehabilitation standards for those individuals with certain criminal convictions seeking employment with a district for a position that does not require a license and those individuals currently employed by a district in a position that does not require a license but who are subject to the requirements of a criminal records check pursuant to section 3319.391 of the Revised Code. (The provisions of this rule do not apply to school bus or school van drivers.)

The rule establishes offenses for which employment and a determination of rehabilitation of a non-licensed individual for a position within a school are expressly forbidden and sets forth conditions under which a determination of rehabilitation is possible.

(A) Definitions:

(1) "Applicant" means one who is under final consideration for appointment or employment in a position with a district that does not require an educator license.

(2) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

For the purposes of this rule, "date of criminal records check" shall mean the date of receipt of the results of a background check requested by a district, which shall be time-stamped by the district on the date of receipt by the district.

(3) "District" means a school district as described in section 3311.01 of the Revised Code, a municipal school district as described in section 3311.71 of the Revised Code, an educational service center, a community school, a county MR/DD, a chartered non-public school, or a preschool program.

(4) "Employee" means a current employee of a school district who is not required to be licensed or certificated, but who is subject to the requirements of a background check pursuant to section 3319.391 of the Revised Code.

(5) "Offense" for the purposes of this rule means an offense in division (B)(1) of section 3319.39 and of the Revised Code and includes any municipal ordinance, law of this state, another state, or the United States that is substantially equivalent to one of the offenses referred to in division (B)(1) of section 3319.39 of the Revised Code.

(6) "Non-rehabilitative offense" means a criminal offense that would prohibit a district from hiring or continuing employment of such an individual, and are the following:

- (a) Sexually-oriented offenses: sections 2907.02 (rape), 2907.03 (sexual battery), 2907.04 (unlawful sexual conduct with a minor), 2907.05 (gross sexual imposition), 2907.06 (sexual imposition), 2907.07 (importuning), 2907.21 (compelling prostitution), 2907.22 (promoting prostitution), 2907.23 (procuring), 2907.25 (prostitution; after positive HIV test), 2907.31 (disseminating matter harmful to juveniles), 2907.32 (pandering obscenity), 2907.321 (pandering obscenity involving a minor), 2907.322 (pandering sexually oriented matter involving a minor), or 2907.323 (illegal use of a minor in nudity-oriented material or performance) of the Revised Code or a violation of former section 2907.12 (felonious sexual penetration) of the Revised Code.
- (b) Child-related violent offenses: sections 2905.01 (kidnapping), 2905.02 (abduction), 2905.05 (criminal child enticement), 2919.23 (interference of custody) of the Revised Code that would have been a violation of section 2905.04 (child stealing) of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, divisions (B)(1), (2), (3), or (4) of section 2919.22 (endangering children) of the Revised Code.
- (c) Violent offenses: sections 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), 2903.04 (involuntary manslaughter) of the Revised Code.
- (d) “Other violence-related offenses,” which mean a violation of the following sections that occurred either within twenty years prior to the date of the current application for a position with the district or, for a current employee of a district, within twenty years prior to the date of the current criminal records check: 2903.11 (felonious assault), 2903.12 (aggravated assault), 2911.01 (aggravated robbery), 2911.02 (robbery), 2911.11 (aggravated burglary), or 2923.161 (improper discharge firearm at or into habitation; school-related offenses) of the Revised Code; 3716.11 (placing harmful objects in food/confection), 2919.12 (unlawful abortion) of the Revised Code.
- (e) “Drug offenses,” which mean a violation of the following sections that occurred either within ten years prior to the date of the current application for a position with the district or, for a current employee of a district, within ten years prior to the date of the current criminal records check: sections 2925.02 (corrupting another with drugs), 2925.03 (trafficking in drugs), 2925.04 (illegal manufacture of drugs or cultivation of marihuana), 2925.05 (funding of drug or marihuana trafficking), 2925.06 (illegal administration or distribution of anabolic steroids) of the Revised Code.

(f) "Theft offense," which means a violation of section 2911.12 (burglary) of the Revised Code that occurred either within ten years prior to the date of the current application for a position with the district or, for a current employee of a district, within ten years prior to the date of the current criminal records check.

(g) "Other offenses," which mean a violation of the following sections that occurred either within five years prior to the date of the current application for a position with the district, or for a current employee of a district, within five years prior to the date of the current criminal records check: 2903.13 (assault), 2903.16 (failing to provide for a functionally impaired person), 2903.21 (aggravated menacing), 2903.34 (patient use or neglect), 2907.08 (voyeurism), 2907.09 (public indecency), division (A) of section 2919.22 (endangering children), 2919.24 (contributing to unruliness or delinquency of a child), 2919.25 (domestic violence), 2923.12 (carrying concealed weapons), 2923.13 (having weapons while under disability), 2925.11 (possession of a controlled substance that is not a minor drug possession offense) of the Revised Code.

(B) No district shall employ an applicant upon learning that he/she has pled guilty to, been found guilty by a jury or court of, or convicted of any violation of a non-rehabilitative offense as listed in paragraph (A)(6) of this rule. In addition, the district shall release an employee from employment upon learning that he/she has pled guilty to, been found guilty by a jury or court of, or convicted of any violation of a non-rehabilitative offense as listed in paragraph (A)(6) of this rule. Likewise, a district shall release from employment an individual if the results of a criminal records check indicate that, pursuant to this rule, the applicant does not qualify for employment.

(C) Pursuant to division (B)(2) of section 3319.39 of the Revised Code, a district may employ an applicant conditionally until the criminal records check required by section 3319.39 of the Revised Code is completed and the district receives the results of the criminal records check. If the results of the criminal records check indicate that, pursuant to this rule, the applicant does not qualify for employment, the district shall release the applicant from employment.

(D) A district maintains the discretion whether to employ or retain in employment an individual who has been deemed rehabilitated pursuant to this rule. A district may employ an applicant or continue to employ an individual that has previously pled guilty to, been found guilty by a jury or court of, or convicted of an offense listed in division (B)(1) of section 3319.39 of the Revised Code, if all of the following conditions for rehabilitation are met:

(1) The offense is not a non-rehabilitative offense as listed in paragraph (A)(6) of

this rule:

- (2) At the time of the offense, the victim of the offense was not a person under eighteen years of age or enrolled as a student in a district.
- (3) The applicant or employee provides written confirmation of his/her efforts at rehabilitation and the results of those efforts. Written confirmation may include a statement by a court, parole officer, probation officer and/or counselor, or another source as approved by the district that the applicant or employee has been rehabilitated.
- (4) A reasonable person would conclude that the applicant's hiring or the retention of the employee would not jeopardize the health, safety, or welfare of the persons served by the district, based upon information pertinent to the following factors:
 - (a) The nature and seriousness of the crime;
 - (b) The extent of the applicant or employee's past criminal activity;
 - (c) The age of the applicant or employee when the crime was committed;
 - (d) The amount of time elapsed since the applicant or employee's last criminal activity;
 - (e) The conduct and work activity of the applicant or employee before and after the criminal activity;
 - (f) Whether the applicant or employee has completed the terms of his probation or deferred adjudication;
 - (g) Evidence of rehabilitation;
 - (h) Whether the applicant fully disclosed the crime to the district;
 - (i) Whether employment could have a negative impact on the local education community;
 - (j) Whether employment could have a negative impact on the state-wide education community;
 - (k) Any other factor the district considers relevant.
- (E) It is the applicant or employee's duty to provide written evidence that the conditions specified in paragraph (D) of this rule are met. If the applicant or employee fails to provide such evidence or if the district determines that the proof offered by the applicant or employee is inconclusive or does not establish proof of rehabilitation,

- the applicant shall not be hired or the employee shall be released from employment. Any doubt shall be resolved in favor of protecting the persons served by the district.
- (F) Except as otherwise specified in this rule, the provisions of this rule are also applicable to records of convictions that have been sealed pursuant to section 2953.32 of the Revised Code or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to section 2953.32 of the Revised Code.
- (G) A plea of guilty to, a finding of guilt by a jury or court of, or a conviction of an offense listed in division (B)(1) of section 3319.39 of the Revised Code shall not prevent an applicant's hiring or the retention of an employee if the applicant or employee has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code or the conviction or guilty plea has been set aside pursuant to law. For purposes of this rule, "unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.
- (H) As a condition of initial or continued employment pursuant to the requirements of this rule, the district may request the applicant or employee to be evaluated by a licensed provider (e.g. physician, psychologist, psychiatrist, independent social worker, professional counselor, chemical dependency counselor, etc.) and/or successfully complete a recognized and/or certified treatment program relevant to the nature of the conviction. (Unless otherwise specified in an employee contract, labor agreement, or other similar agreement, the employee or applicant shall bear all direct and associated costs of the evaluation and treatment program.) Failure on the part of an applicant or employee to comply with the district's request pursuant to this paragraph may be considered by the district as a factor against initial or continued employment.
- (I) Prior to rendering a decision on employment, the district shall provide an opportunity for a meeting to an employee, if requested by the individual, so that he/she may provide evidence of rehabilitation pursuant to the requirements of this rule.
- (J) The decision of the district on whether to employ or continue to employ an individual pursuant to the requirements of this rule can not be appealed to the Ohio department of education or state board of education.
- (K) This rule is promulgated under the state board and department of education's rule-making authority under division (E) of section 3319.39 of the Revised Code.

**BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT
OF THE CITY OF CINCINNATI**

MULTIPLE YEAR ADMINISTRATIVE CONTRACT

37100, A to E-Secondary

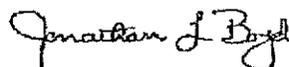
This Agreement, entered into this 14th day of July, 2008 by and between

[REDACTED]
and the Board of Education of the City School District of the City of Cincinnati, Ohio for an administrative position.

Witnesseth:

The term of this agreement shall be for TWO school years, or for such portion thereof as may remain after the beginning date of service, subject to the following conditions, to-wit:

1. The position, term of service and salary shall be specified in the annual notice to be given by the Board pursuant to Section 3319.12 of the Revised Code of Ohio, which notice is made part of this Contract.
2. Assignments may be changed according to law.
3. All Policies of the Board of Education shall be observed and duties as defined by the Superintendent shall be discharged efficiently and faithfully.
4. Loss of pay on account of absence from duty shall be governed by the Policies of the Board.
5. This agreement is subject to a satisfactory medical examination.
6. All provisions of the laws of Ohio relative to the SCHOOL EMPLOYEES Retirement System shall be observed.
7. Commencement of the term of this agreement subject to confirmation of appropriate state certification.
8. In the event of a reduction in Administrative Supervisory Positions, the employee hereby agrees to abide by Administrative Procedures No. 4115.6/4215.6, Reduction in Force Procedure for leadership personnel.



Treasurer

Employee Copy - retain for your Records

